

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of CHILDS, Minor.

UNPUBLISHED

June 10, 2014

No. 318441

Wayne Circuit Court

Family Division

LC No. 10-492811-NA

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Before: WILDER, P.J., and SAAD and K. F. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to her minor child pursuant to MCL 712.19b(3)(c)(i), (g), (i), and (j). We affirm.

Respondent argues that the trial court erred in finding that the evidence supported a statutory ground for termination, and in finding that termination of her parental rights was in the child's best interests. We disagree.

The petitioner has the burden of establishing a statutory ground for termination in MCL 712A.19b(3) by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000). A trial court's factual findings as well as its ultimate determination that a statutory ground for termination has been proven is reviewed for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A trial court's decision regarding a child's best interests is also reviewed for clear error. *In re Trejo*, 462 Mich at 356-357. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *Id.* Regard is given to "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

The trial court found that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(c)(i), (g), (i), and (j), which permit termination under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

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(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

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(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

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(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The initial dispositional order was issued in October 2010, considerably more than 182 days before the termination hearing in August 2013. The principal conditions that led to the child's adjudication as a court ward were respondent's inability to care for the child due to a history of criminality and frequent incarceration, and unresolved substance abuse and mental health issues that led to the termination of her parental rights to three other children in 2006. Respondent had an opportunity to participate in services for more than three years. During this time, she was incarcerated twice. She participated in some substance abuse treatment, but failed to benefit from the treatment as evidenced by her continued use of marijuana, even while pregnant. She failed to participate in a single random drug screen with the agency. She did not begin consistently participating in individual counseling until the child had been in care for nearly three years. She refused to attend family therapy with her sister, who fostered the child. Respondent was required to retake parenting classes. She never obtained housing suitable for herself and the child, and she was not successful in obtaining employment. She refused to accept a referral to a program to assist with housing and employment. Although her behavior during visits was appropriate, she was inconsistent in attending scheduled visitations. She attended only 18 of 40 available visits since September 2012.

Despite participating in services for more than three years, respondent was never in substantial compliance with her treatment plan. At the termination hearing, the trial court found that "there has been no meaningful improvement in any of the aspects that gave rise to [the child's] being removed in the first place." That finding is not clearly erroneous. Considering respondent's long history of criminal activity, her continued use of drugs, her failure to benefit from the services provided, and her failure to obtain suitable housing or employment over the three-year period the child was in care, the trial court did not clearly err in finding that there was no reasonable likelihood that respondent would be able to rectify the conditions that led to the

child's adjudication, and no reasonable expectation that respondent would be able to provide proper care and custody, within a reasonable time considering the child's age. MCL 712A.19b(3)(c)(i) and (g). Further, it was reasonably likely that the child would be harmed if returned to respondent's home. MCL 712A.19b(3)(j). In addition, it was undisputed that respondent's parental rights to three other children were previously terminated in 2006, and the evidence clearly established that previous attempts to rehabilitate respondent were unsuccessful. MCL 712A.19b(3)(i). Accordingly, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

Respondent argues that petitioner did not provide her with sufficient reunification services. We disagree. Respondent never objected at the termination hearing to the services provided or claimed that they were inadequate. Therefore, her argument is not preserved for appeal, *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012), and review is limited to determining whether a plain error affected respondent's substantial rights, *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

When a child is removed from the custody of a parent, the Department of Human Services (DHS) is generally required to make reasonable efforts to rectify the conditions that led to the child's removal, to reunify the family, and to avoid termination of parental rights. MCL 712A.19a(2); *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). Although reunification services are not required where, as here, "[t]he parent has had rights to the child's siblings involuntarily terminated," MCL 712A.19a(2)(c), the trial court denied an original petition for permanent custody and ordered that respondent be given a treatment plan to enable her to participate in reunification services. During the proceedings, the trial court was critical of the DHS's failure to timely implement some services. However, the court also denied prior requests to proceed to termination and made it clear that it would not entertain a supplemental petition to terminate respondent's parental rights unless respondent was afforded a full opportunity to participate in reunification services. By the time of the termination hearing, respondent had an opportunity to participate in services for more than three years. During that time, she was offered numerous services, including parenting classes, individual and family therapy, psychological and psychiatric evaluations, regular visitation, substance abuse treatment and drug screens, and assistance in obtaining housing and employment. Respondent refused to participate in or take advantage of some services, did not benefit from the parenting classes or substance abuse treatment, failed to consistently visit her child, continued to test positive for marijuana, and failed to obtain employment or suitable housing. The trial court did not clearly err in finding that, after more than three years, there had been "no meaningful improvement in any of the aspects that gave rise to" the child's removal. In sum, the record does not support respondent's argument that termination of her parental rights was precluded because petitioner failed to make reasonable efforts to rectify the conditions that led to the child's removal and to reunify the family.

Finally, respondent argues that termination of her parental rights was not in the child's best interests under MCL 712A.19b(5). We disagree. Whether termination is in the child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The child, at age four, had been a court ward for more than three years of her life. She had only been in respondent's care for approximately six months. The trial court found that the child was at a stage where she required and deserved permanency, which

respondent was incapable of providing within the foreseeable future. The trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Henry William Saad  
/s/ Kirsten Frank Kelly